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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANGEL ESPINOSA et al.,

Plaintiffs and Appellants,

v.

CHRISTOPHER CROWDER et al.,

Defendants and Respondents.

G051274

(Super. Ct. No. 30-2012-00612702)

O P I N I O N

Appeal from an interlocutory judgment of the Superior Court of Orange County, Steven L. Perk, Judge. Appeal dismissed.

Irvine Law Group, Rod Bidgoli and Steve A. Buchwalter for Plaintiffs and Appellants.

Slaughter, Reagan & Cole and Gabriele M. Lashly for Defendants and Respondents.

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THE COURT:*

We dismiss the appeal for lack of jurisdiction.

BACKGROUND

The following is a summary of the facts alleged in the fourth amended complaint.

Defendants Christopher and Ken Crowder (the Crowders) duped plaintiffs into investing in a highly risky business venture. Essentially, the Crowders enticed plaintiffs into making a series of loans to Concordia Financing Co., a corporation wholly owned by the Crowders. In exchange for the loans, plaintiffs received from Concordia unsecured two-year promissory notes bearing a generous rate of interest. Over the course of several years, as each note came due, the Crowders convinced plaintiffs to roll over the investment into a new unsecured note signed by Concordia. When the economy crashed in 2009, the Crowders informed plaintiffs Concordia was broke and could pay nothing on the promissory notes. Plaintiffs lost all the money they invested.

Plaintiffs sued the Crowders and Concordia for numerous counts of breach of fiduciary duty and fraud (counts 1-11), and sued Concordia for failure to pay on promissory notes and breach of written contracts (“the contract claims,” counts 12-23). Importantly, the introductory part of the complaint includes a separate section entitled “successor/continuation liability alter-ego allegations” in which plaintiffs allege Concordia is the alter ego of the Crowders. This section states standard alter ego allegations (e.g., Concordia’s separate corporate identity is a fiction; the Crowders ignored corporate formalities and used Concordia’s assets as their own). In another separate section, entitled “general allegations as to all plaintiffs,” the complaint repeats the earlier alter ego allegations and adds additional details concerning the Crowders’

* Before O’Leary, P.J., Bedsworth, J., and Ikola, J.

disregard of corporate formalities and the “unity of interest” that existed between the Crowders and Concordia.

Plaintiffs had difficulty stating their claims for fraud and breach of fiduciary duty with sufficient particularity to survive a demurrer. Three times, the trial court sustained defendants’ demurrer to counts 1 through 11 and granted plaintiffs leave to amend. Finally, on August 22, 2014, the trial court sustained without leave to amend defendants’ demurrer to counts 1 through 11 in the fourth amended complaint.

Thereafter, the Crowders asked the trial court to enter judgment in their favor on the fourth amended complaint, dismissing them from the action. They contended dismissal was proper in light of their successful demurrer to counts 1 through 11 and the fact they are not named as defendants on the remaining contract claims (counts 12-23). Plaintiffs objected to entry of the judgment of dismissal, arguing the Crowders are liable on claims 12 through 23 based on the alter ego allegations. Consequently, plaintiffs argued, the one final judgment rule precluded entry of a judgment in favor of the Crowders.

The trial court entered an interlocutory judgment in favor of the Crowders as to counts 1 through 11 only. The court did so by interlineating the proposed judgment the Crowders submitted, adding clarifying references to “causes of action 1-11” where the proposed judgment referred to the complaint as a whole. As entered, the judgment states in pertinent part as follows: “(1) Plaintiffs’ Fourth Amended Complaint *causes of action 1-11* is dismissed as to defendants CHRISTOPHER CROWDER and KEN CROWDER. [¶] (2) Judgment is entered in favor of defendants [the Crowders] and against plaintiffs *on causes of action 1-11 of the 4th A.C.*” (Interlineations noted in italics.)

Plaintiffs filed a notice of appeal from the interlocutory judgment. On our own motion, we invited plaintiffs to submit a letter brief explaining why the appeal should not be dismissed as from a nonappealable judgment or order.

Plaintiffs' letter brief agreed dismissal was warranted because the interlocutory judgment was not a final, appealable judgment. Plaintiffs reiterated their argument to the trial court that entry of the judgment was "not appropriate" because "certain issues (i.e., alter ego allegations) still remain unresolved." Plaintiffs explained they filed the appeal only to preserve their right to appeal.

We then ordered the Crowders to submit a letter brief addressing the jurisdictional issue. They took a contrary position to plaintiffs', arguing the judgment "is a final, [] appealable judgment" because "it disposed of all causes of action alleged against the Crowders." They asserted the contract claims remaining in the fourth amended complaint "are alleged *solely* against Defendant Concordia . . . , *not against the Crowders*" and the alter ego allegations in the introductory part of the complaint were of no consequence: "If Plaintiffs intended to state a claim for breach of contract or failure to pay under the promissory notes against the Crowders based on the 'alter ego' allegations, they needed to name the Crowders as parties to those causes of action." The Crowders' sole authority for this argument was rule 2.112 of the California Rules of Court, which provides: "'Each separately stated cause of action, count, or defense must specifically state: [. . .] (4) the party or parties to whom it is directed (e.g., 'against defendant Smith').'"

DISCUSSION

Applicable Law

The right to appeal is purely statutory, and absent an appealable judgment or order, the appellate court has no jurisdiction to consider the appeal. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.)

"Under the 'one final judgment' rule, an order or judgment that fails to dispose of all claims between the litigants is not appealable under Code of Civil Procedure section 904.1, subdivision (a)." (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 436.) This rule does not apply, however, "when the case involves multiple parties

and a judgment is entered which leaves no issue to be determined as to one party.

[Citations.]” [Citation.]” (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9 (*Ram*); *Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved of on other grounds by *Ochoa v. Superior Court* (1985) 39 Cal.3d 159.)

Analysis

The appealability of the interlocutory judgment here depends on the effect of the complaint’s alter ego allegations. If, as defendants contend, these allegations are inconsequential because the contract claims do not specifically *name* the Crowders as defendants, then the interlocutory judgment “leaves no issue to be determined” as to the Crowders and the appeal can proceed. (*Ram, supra*, 234 Cal.App.4th at p. 9.)

Conversely, if plaintiffs are correct, the alter ego allegations provide a basis for finding Defendants liable on the contract claims despite the omission of their names as defendants on each count, then the one final judgment rule bars this appeal. We are persuaded plaintiffs’ view is correct and the appeal must be dismissed.

Each of the contract claims specifically incorporates by reference the alter ego allegations stated in the introductory part of the complaint. Courts look to the allegations of a complaint to determine the effect of the pleading, disregarding any conflicting information in the title of the complaint or cause of action. “[T]he nature and character of a pleading are to be determined from its allegations, regardless of what they may be called, and the subject matter of the action and the issues involved are determined from the facts alleged rather than from the title of the pleading. [Citation.] [¶] . . . [¶] [T]he labelling of a plaintiff’s pleading is not determinative[.]” (*Kreutzer v. County of San Diego* (1984) 153 Cal.App.3d 62, 69.)

A leading treatise confirms the rule the allegations of the complaint, rather than information in the title, determine whether a claim is stated against a defendant. “In determining whether a particular person or entity is adequately designated as a party to the action, courts look to the body of the complaint as well as to the caption. If correctly

designated in the body, so that a reasonable person would realize he or she is the party intended to be named defendant, errors in the caption can be cured by amendment . . . even after the statute of limitations has run. . . .” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group), ¶ 6:94, p. 6-28, citing *Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 547.)

The normal rules governing review of rulings on demurrer are also relevant here. We must “give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]” (*Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 269.) Reading the fourth amended complaint reasonably and as a whole, we find plaintiffs plainly seek to hold the Crowders liable on *all* counts based on alter ego. Consequently, the complaint’s failure to name the Crowders as defendants in each contract claim is of no consequence.

The interlocutory judgment itself supports the view entry of that judgment did not resolve the Crowders’ liability under the fourth amended complaint. Significantly, the trial court’s interlineations on the proposed judgment make clear the demurrer ruling only ended the Crowders’ liability on counts 1 through 11, not on the remaining contract claims. The trial court pointedly dismissed as to the Crowders “causes of action 1-11,” not the entire complaint.

Because the interlocutory judgment did not finally resolve the litigation between plaintiffs and the Crowders, it is not a final appealable judgment. Consequently, the appeal must be dismissed for lack of jurisdiction.

DISPOSITION

The appeal is dismissed. In the interests of justice, each side shall bear its own costs on appeal.